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SAIGON PLAZA ASSOCIATION, LLC
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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 In re:

14 SAIGON PLAZA ASSOCIATION, LLC,
15 a California limited liability company

16 Debtor,
17

Case No. 07-40169

Chapter 11

**RESPONSE TO OBJECTIONS TO
APPROVAL OF DISCLOSURE
STATEMENT**

Date: March 16, 2009

Time: 2:00 p.m.

18 Court: Courtroom 201, 1300 Clay St.,
19 Oakland, CA

20 Debtor and Debtor in Possession Saigon Plaza Association, LLC ("Saigon") hereby
21 responds to the objections filed by California Mortgage & Realty, Inc. and affiliated
22 parties (collectively, "CMR") and jointly by Wing Har Ng, Roger Woo and Loretta Woo
23 (the "Woo/Ng Claimants"):
24

25 **I.**

26 **INTRODUCTION**

27 Contrary to CMR's objections, the Debtor's First Amended Disclosure Statement
28 provides adequate information to enable an informed judgment about the proposed plan of

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1 reorganization (“Plan”) under the circumstances of this case. CMR’s disagreement with
2 the Debtor about the likelihood of the Debtor’s success in the litigation against CMR
3 should not prevent the Court from approving the Disclosure Statement and proceeding
4 with Plan confirmation.

5 The Plan proposed by the Debtor treats all creditors, including CMR, appropriately
6 while allowing the Debtor to obtain resolution of its claims with regard to avoidance of \$2
7 million in transfers and to the validity of CMR’s lien on the Debtor’s real property. The
8 Court can expedite consideration of the litigation so that speculation about its outcome is
9 unnecessary. The property can and will be listed for sale so that its condition and
10 maintenance are not at issue.

11 II.

12 RESPONSE TO CMR’S STATEMENT OF FACTS

13 CMR uses much of its objection to give a lengthy, unsupported recitation of its
14 view of the pertinent facts. In its previously filed Reply to CMR’s opposition to the
15 Debtor’s motion for leave to amend the complaint in the adversary proceeding, the Debtor
16 responded to the same factual statement and will not repeat that response here.

17 Saigon stated its understanding of the applicable facts concerning the loan from
18 CMR in the Disclosure Statement. It is not possible to resolve the factual disputes in the
19 context of a disclosure statement hearing and there is no need to do so in order for
20 creditors to make a decision concerning the Plan. If the court thinks it necessary, Saigon
21 has no objection to inserting in the Disclosure Statement a summary of CMR’s position
22 with regard to the applicable facts and law.

23 III.

24 RESPONSE TO OBJECTIONS

25 A. CMR’s Objections

26 CMR objects generally that the Disclosure Statement lacks information sufficient to
27 permit a hypothetical reasonable investor to make an informed judgment about the
28 proposed plan. The Debtor disagrees and believes that there is adequate disclosure of the

1 Debtor's financial situation, litigation and other matters. CMR should not be permitted to
2 turn the disclosure statement hearing into a mini-confirmation hearing. *See Duff v. U.S.*
3 *Trustee (In re California Fidelity, Inc.)*, 198 B.R. 567, 571 (BAP 9th Cir. 1996) ("The
4 purpose of a disclosure statement is to give all creditors a source of information which
5 allows them to make an informed choice regarding the approval or rejection of a plan.").

6 The disclosure statement requirements are flexible, as "Congress expressly
7 recognized that businesses seeking the protection of Chapter 11 cannot always be expected
8 to have available information prepared with the same expertise and precision as that of a
9 healthy and solvent enterprise." *In re Stanley Hotel, Inc.*, 13 B.R. 926, 930 (Bankr. Colo.
10 1981). Cries for additional and more detailed disclosure may in fact reduce the
11 effectiveness of a disclosure statement in providing the information necessary to accept or
12 reject the plan.

13 A disclosure statement must be meaningful to be understood,
14 and it must be understood to be effective. Thus, what lawyers
15 regard as useful information based upon their experience might
16 be meaningless verbiage in the hands of a "typical" investor.
17 Accordingly, by overburdening a proponent's disclosure
18 statement with information significant and meaningful to
19 lawyers alone may result ultimately in reducing the disclosure
20 statement to an overlong, incomprehensible, ineffective
21 collection of words to those whose interests are to be served by
22 disclosure. Thus, compounding a disclosure statement for the
23 sake of a lawyer's notion of completeness, or because some
24 additional information might enhance one's understanding,
25 may not always be necessary or desirable, and the length of a
26 document should not be the test of its effectiveness.

27 *Id.*, at 926, 933-34.

28 In this case, the Disclosure Statement describes the matters at issue in the litigation
with CMR and provides the Debtor's opinion as to the outcome of that litigation. While
CMR objects that the Statement does not contain an "evaluation" of the likelihood of
success, that is not necessary for the Disclosure Statement to be approved. *In re Aspen*
Limousine Service Inc., 193 B.R. 325, 335 (D. Colo. 1996) ("It is not necessary to the

1 adequate information standard that a disclosure statement specifically speculate as to
2 future uncertainties such as the consequences of various possible outcomes of pending. . .
3 litigation.").

4 CMR further questions whether it will be possible for the Debtor to recover \$2
5 million from CMR and its affiliates and investors, noting that the original lender has itself
6 filed for bankruptcy protection (though this is also pointed out in the Disclosure Statement
7 at 15:24-25). The creditworthiness of CMR is, as noted in the Disclosure Statement, only
8 partly relevant here. Pursuant to Bankruptcy Code section 502(d), unless avoided amounts
9 are returned to the estate, the entities which received the \$2 million during Saigon's
10 bankruptcy case as reductions in principal on the loan will lose the ability to enforce their
11 lien against Saigon's real property. Saigon's Plan is feasible whether it obtains the \$2
12 million or whether it voids the CMR lien.

13 CMR also objects to the valuation information in the Disclosure Statement. But
14 Bankruptcy Code section 1125(a)(1) limits the detail necessary with regard to information
15 in a disclosure statement to that which is "reasonably practicable in light of the nature and
16 history of the debtor and the condition of the debtor's books and records." That section
17 also provides for the court to consider "the benefit of additional information to creditors
18 and other parties in interest, and the cost of providing additional information." Here, it is
19 obvious that the relevant real estate market is in disarray and that appraisals are difficult to
20 make and of less predictive value. Indeed, one of the funds managed by CMR has
21 regularly advised its own investors that it is having great difficulty determining with any
22 accuracy what values to put on its assets. Fore example, in December 2008, CMR
23 Mortgage Fund II told its investors:

24 Valuation of the Fund's assets has been difficult. The Fund's
25 assets consist primarily of real estate mortgages and real estate
26 properties we have acquired through foreclosure. . . .Much of
27 this real estate represents land held for development which has,
28 along with many other types of real estate properties, gone
down in value significantly during this current downturn. In
several cases, it has been a challenging task to arrive at current
market values for properties where there are very few relative
comparable sales to base a current valuation upon.

1 As we have discussed in newsletters, the Manager and third
2 party appraisers are in some cases unable to find relevant
3 comparable sales data because there are no comparable sales.
4 To the extent that comparable information is identified and an
5 appraisal is completed, it is difficult for us to analyze such
6 appraisals in determining the appropriate financial statement
7 impact, if any. This is an industry-wide problem that has been
8 recognized by the SEC and the US Financial Accounting
9 Standards Board in recent publications.

10 See Form 8-K filed by CMR Mortgage Fund II, LLC on December 5, 2008, found at
11 <http://www.secinfo.com/d11MXs.t2984.d.htm>. Given these problems there is little benefit
12 to be gained from demanding either further specificity in the Debtor's valuations or in
13 requiring that the Debtor retain experts to conduct another appraisal.

14 CMR further questions whether the Plan is feasible based on its claim that CMR
15 will prevail in the litigation. Saigon has responded to CMR's litigation position in its
16 Reply brief with regard to the motion for leave to amend and continues to believe it will
17 prevail in the litigation. Further, as noted in the Disclosure Statement, the Debtor intends
18 to request an expedited summary judgment hearing and/or trial on the portion of the
19 litigation currently being litigated in the Bankruptcy Court against CMR and its affiliates.
20 The Debtor suggests that the Plan confirmation hearing follow on these proceedings so that
21 the Court's review of confirmation issues can reflect its decision in the litigation.

22 The Debtor also intends to eliminate issues with regard to the construction,
23 financing and value of the real property by listing the property for sale using a real estate
24 broker. The Debtor will shortly file its application to employ a broker to do so. Selling the
25 property now responds to CMR's objections with regard to preserving the real property
26 during the pendency of the litigation. In addition, it avoids the delay in realizing on the
27 value in the property that CMR complains of—the Plan process and litigation can continue
28 while the sale process takes place for the benefit of the Debtor and its creditors.

CMR also questions whether creditors will benefit from the Plan in light of the
limited value of the property and the litigation claims in comparison to the claims asserted
by CMR and the Woos. The main purpose, however, of the litigation is to determine

1 whether in fact CMR and its affiliates have a claim at all and whether it is secured by the
2 property. Unless that litigation is pursued, there will be no opportunity for creditors (other
3 than CMR) to receive any distribution on their claims.

4 If Saigon is successful in avoiding CMR's lien and preserving it for the benefit of
5 the estate, then the value of the property will be shared among all creditors with allowed
6 claims. The Woo/Ng Claimants will not have a secured claim given that the preserved
7 CMR lien will exceed the value of the property. Recovery of part or all of the \$2 million
8 transferred to CMR and its investors would also benefit the estate's other creditors.

9 In sum, the proposed Plan is feasible and offers creditors other than CMR the only
10 opportunity to obtain a dividend on their claims while treating CMR appropriately during
11 the pendency of litigation against it.

12 **B. Response to Objection Filed by Woo/Ng Claimants**

13 The Woo/Ng Claimants assert that they have a secured claim regardless of the value
14 of that claim. In fact, if the Debtor is successful in setting aside and preserving the lien
15 claimed by CMR, the Debtor can utilize the preserved lien at a valuation hearing with the
16 Woo/Ng Claimants to establish that there is no value for their secured claim. That is
17 because the preserved lien will be in excess of the value of the real property, leaving no
18 value for the Woo/Ng claim.

19 Assuming that the Woo/Ng lien is stripped from the property, they will still have an
20 unsecured claim. The value of that unsecured claim should be measured by the amount of
21 consideration given by them to the Debtor, an amount the Debtor believes is less than the
22 face amount of the notes and deeds of trust, as some of the consideration provided by
23 Woo/Ng went to individual members of Saigon Plaza and not to benefit the entity and its
24 property.

25 **C. CMR's Analysis of the Legal Issues is Incorrect**

26 The Debtor responded to CMR's legal analysis in its Reply to CMR's Opposition to
27 the Motion for Leave to Amend the complaint in the adversary proceeding. As noted
28 there, CMR's position is not based on the actual facts and misstates the applicable law.

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IV.
CONCLUSION

The Debtor respectfully requests that the Court approve its Disclosure Statement and permit the Debtor to proceed toward Plan confirmation.

Dated: March 11, 2009

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Steven B. Sacks
STEVEN B. SACKS

Attorneys for Debtor and Debtor in Possession,
Saigon Plaza Association, LLC